

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JULIE HAIRSTON,

Plaintiff,

v.

DRUG ENFORCEMENT
AGENCY,

Defendant.

CIVIL ACTION NO. 09-13907

DISTRICT JUDGE ANNA DIGGS TAYLOR

MAGISTRATE JUDGE DONALD A. SCHEER

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

RECOMMENDATION: Defendant's Motion to Dismiss should be GRANTED, as Plaintiff has failed to state a claim upon which relief can be granted.

* * *

Plaintiff was allowed to proceed in forma pauperis and filed the instant Complaint, pursuant to the Administrative Procedures Act (APA), 5 U.S.C. § 551, et seq., on October 2, 2009, seeking a court order that the Drug Enforcement Agency (DEA) send her a registration certification that would enable her to write prescriptions for pharmaceutical medications. Plaintiff, a doctor of osteopathic medicine, applied to renew her registration certification in March 2009. The renewal application was not initially processed by the DEA because Plaintiff purportedly had only completed the first section of the multi-page application. Plaintiff submitted a completed application on June 5, 2009, which was accepted by the DEA on July 13, 2009. On September 25, 2009, a new DEA registration certificate was mailed to the Plaintiff allowing her to write prescriptions for pharmaceuticals (See registration certificate and affidavit of Chief of Registration and Program Support for the DEA, attached as Exhibits 4 and 5 of Defendant's Motion to Dismiss).

Defendant filed a Motion to Dismiss on February 16, 2010, asserting that Plaintiff had failed to state a claim for relief. Since Plaintiff has received the registration certification allowing her to order prescription medications, the DEA asserts that her request for injunctive relief was now moot. Defendant also maintained that Plaintiff was not entitled an interest payment from March 2009, (the date the DEA deposited her check to pay for the registration certification) through the present, nor was she entitled to her old certificate registration number. Plaintiff has not filed a response to Defendant's Motion to Dismiss to date, even though she was given an opportunity to do so.

DISCUSSION AND ANALYSIS

Plaintiff's complaint should be dismissed, as it fails to state a claim for which relief can be granted. Plaintiff apparently has received her certification from the DEA to prescribe medications. Therefore, her request that the Court order defendant to produce that document, as well as to be notified of further delays in processing her application, is now moot and should be dismissed. Plaintiff has no property right to any particular registration number, and she does not cite any authority allowing her to keep her old number. Finally, Plaintiff's claim for interest on her application fee must be dismissed on jurisdictional grounds, as the government has not waived its sovereign immunity against suits seeking monetary damages under the APA. FDIC v. Meyer, 510 U.S. 471, 475 (1994) ("absent a waiver, sovereign immunity shields the federal government and its agencies from suit".) Since Plaintiff is unable to prevail on any of her claims, she is not entitled to court costs. See Fed R. Civ. P. 54(d) (stating that costs are allowed only to the prevailing party).

For the foregoing reasons, it is recommended that Defendant's Motion to Dismiss be GRANTED. Given this recommendation, Plaintiff's respective Motions to Immediately

Release her DEA Certification (Docket #3), for Immediate Consideration (Docket #8 and #14) and to Appoint Counsel (Docket #19) should be denied.

The parties are advised that any objections to this Report and Recommendation must be filed with the Court within fourteen (14) days after they are served with a copy, or further appeal from Judge Taylor's acceptance thereof is waived.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: April 28, 2010

CERTIFICATE OF SERVICE

I hereby certify on April 28, 2010 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on April 28, 2010: **Julie Hairston.**

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217